



Arkansas

State Revenue Tax Quarterly

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New Taxable Services Generate Record Number of Requests for Legal Opinions to Office of Revenue Legal Counsel

A large number of businesses requested legal opinions as a result of Act 107 of the 2nd Extraordinary Session of 2003. This Act states that, beginning July 1, 2004, Arkansas state, city, and county sales taxes are to be collected on the following services:

New Taxable Services Effective July 1, 2004:

Wrecker and Towing Service	Mini Warehouse and Self Storage Rental Services
Collection and Disposal of Solid Waste	Body Piercing, Tattooing, and Electrolysis
Cleaning Parking Lots and Gutters	Security and Alarm Monitoring Services
Dry Cleaning and Laundry Services	New Installation and Replacement Labor for Flooring
Industrial Laundry Services	Boat Storage and Docking Fees
Furnishing Campground Spaces or Trailer Spaces at Public or Privately Owned Campgrounds on Less than a Month-to-Month Basis	Pet Grooming and Kennel Services
Locksmith Services	Pest Control Services

The Office of Revenue Legal Counsel normally receives approximately 30-50 requests for a legal opinion each month. However, during the period from April to June, 293 requests were received. Below are a few FAQ's received:

Question: Does a building contractor who does remodeling need to apply for a sales tax permit?

Answer:

If a contractor is engaged in the initial installation of flooring, machinery or heating and air equipment for the first time (initial installation) into an **existing building**, the service is subject to the tax, and a contractor must obtain a sales tax permit. The contractor should charge tax on the labor and the items installed.

If the installation occurs in a **newly constructed building or as part of a substantial modification to a building**, the labor is treated as construction contracting and will not be taxable. The contractor would not need a sales tax permit for new construction.

If the initial installation is a nontaxable service, the contractor should pay tax on the materials and equipment, either by paying tax to the supplier or by self-assessing tax

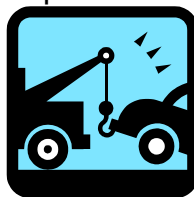
on the purchase price of the materials as a withdrawal from inventory (stock) if the materials were purchased tax free. If taxable and nontaxable services are on the same invoiced job, the invoice should reflect taxable and nontaxable services separately. If an invoice does not separately state taxable and nontaxable services, the entire invoice will be subject to tax.

Question: Is the installation of home security systems subject to tax?

Answer: The installation, replacement, or repair of non-mechanical, passive, or manually-operated components of buildings or structures affixed to real estate such as wiring and security alarms was not taxable prior to Act 107. Those services continue not to be taxable even if furnished in an existing building. Service charges for monitoring security alarms are a taxable service.

Question: Is a transport company that tows motor vehicles to or from a used car dealership subject to tax? Is the towing of a repossessed vehicle subject to tax?

Answer: Wrecker and towing service does not include the transportation of motor vehicles to or from a used car dealership for the purpose of placing the vehicles into inventory for sale or returning the vehicles to an automobile auction for sale nor does wrecker and towing service include towing a repossessed vehicle. Consequently, sales tax will not be due on these activities.



Replacement Labor for Exempt Manufacturing Machinery and Equipment

Several taxpayers have questioned the taxability of labor charges associated with the replacement of machinery and equipment

that is sold exempt from tax. For purposes of this explanation, the sale of the replacement machinery is presumed to be exempt as replacement machinery and equipment used directly in manufacturing. The taxability of the replacement labor is dependent upon into which of the following categories the labor falls.

1. VENDOR PERFORMS REPLACEMENT LABOR - EXEMPT. If the vendor sells the machinery and equipment and the vendor performs the labor necessary to replace the exempt machinery and equipment, the labor is exempt from tax. The labor amount is considered to be part of the gross receipts received by the vendor for the sale of exempt property and is exempt (without regard to whether the labor is separately stated on the invoice).

2. VENDOR BILLS CUSTOMER FOR REPLACEMENT LABOR PERFORMED BY THIRD PARTY - EXEMPT. If the vendor contracts with a third party to perform the labor necessary to replace the exempt machinery and equipment and the vendor bills the customer for the machinery and equipment and the labor charges, the labor is exempt from tax. The labor amount is considered to be part of the gross receipts received by the vendor for the sale of exempt property and is exempt (without regard to whether the labor is separately stated on the invoice).

3. CUSTOMER CONTRACTS DIRECTLY WITH, AND PAYS, A THIRD PARTY TO PERFORM THE REPLACEMENT LABOR - TAXABLE. If the vendor sells the machinery and equipment to the customer and the customer independently contracts with someone other than the vendor to perform the replacement labor, then the replacement labor is taxable.

New and Proposed Rules

Rule 2004-5: This Rule administers and enforces the provisions of Act 32 of 2003, 2nd Extraordinary Session. Act 32 provides an exemption from sales tax for sales of textbooks and instructional materials to Arkansas school districts and Arkansas public schools. Rule 2004-5 clarifies what “instructional materials” means and what items qualify for the exemption and what items do not. The effective date was September 13, 2004.

Proposed Rule 2004-6: This Rule provides uniform procedures for use by taxpayers when seeking a tax refund in the manner provided by current law. It also provides a mechanism allowing a sales tax refund to be paid directly to the customer following assurance from the vendor that the sales tax collected by the vendor from the customer has, in fact, been paid to the state. A public hearing is scheduled on October 21, 2004, and it will be reviewed by Legislative Council on November 4, 2004.

Proposed Rule 2004-7: This rule provides a method and format to comply with the requirements for an application for the cancellation of title or manufacturer’s certificate of origin (MCO). Form 10-318 should be completed, along with the certificate of title or MCO. The application must be signed by all owners and by all parties having a mortgage, lien or security interest. The Department of Finance and Administration shall approve the application for cancellation, cancel the title or MCO, and notify the owner, lending agency, or other entity listed on the application. The public hearing is scheduled for November 9, 2004.

Tax Amnesty Program Update

The Tax Amnesty Program began July 1, 2004. To date, the Taxpayer Assistance Office has received 1,308 applications and

processed 1,141 returns (Corporation Income Tax, Estate Tax, Fiduciary Tax, Individual Income Tax, Sales or Use Tax, and Withholding Tax) and collected \$776,861.61 from 116 taxpayers, which will be deposited into the Public Schools Facilities Fund.



Taxpayers who filed amnesty applications, along with tax returns, between July 1, 2004, and September 30, 2004, must remit the tax amount due on or before **December 31, 2004**, in order for the penalty and interest amounts to be abated.

Sales & Use Tax Compliance Unit has 20 Investigators

In February 2003, twenty investigators were reassigned from other tax sections within the Revenue Division to form the Sales and Use Tax Compliance Unit, a division of the Sales Tax Section, Department of Finance and Administration. Shelia Woods is the Manager of the Unit. The investigators are located over the entire state. These investigators personally visit businesses to collect past due sales tax and missing sales tax reports, to assist taxpayer in filing reports, and to resolve taxpayer complaints.

If taxpayers are behind on sales tax and desire a payment plan, the investigators deliver documents to the taxpayers to complete and then forward the completed documents to the Compliance Unit located in Little Rock, for preparation of a payment plan. The telephone number for the Compliance Unit in Little Rock is 501-683-5560.



New Business Closure Notices mailed for July 2004

To comply with Act 46 of the 2nd Extraordinary Session of 2003, the Business Closure Act, effective July 1, 2004, notices were mailed to taxpayers that failed to file a sales tax report for the month of July 2004. If the taxpayer fails to file or pay sales tax for any two months within a 24-month period, the taxpayer becomes a non-compliant taxpayer. If the taxpayer fails to file or pay sales tax for any three months within a 24 month period, a notice will be delivered or mailed by certified mail notifying the taxpayer that the business will be closed in five days unless the delinquent tax is paid. For additional information on this Act, please refer to the Archives Section for the Quarterly Newsletter No. 2 for April, May, and June 2004.

CHANGES IN SALES & USE TAX

Please Call (501) 682-7104 For Periodic Updates
Regarding Local Sales and Use Taxes
http://www.arkansas.gov/dfa/your_taxes.html

Name	Code	Effective Date	%	Recent Action
Belleville	75-06	10/1/04	1.00	Enacted
Havana	75-07	10/1/04	1.00	Enacted
Saline County	62-00	10/1/04	.375	Enacted

Internet Information

Business and Personal Tax Page

<http://www.accessarkansas.org/dfa/taxes/index.html>

Telephone Information

Corporate Income Tax	(501) 682-4775
Taxpayer Assistance for Individual Income Tax	(501) 682-1100 1-800-882-9275
Automated Refund Inquiry & Tele-tax Information	(501) 682-0200 1-800-438-1992
Sales and Use Tax	682-1895

Taxpayer Assistance Office

501-682-7751

Calendar of Due Dates

10/14/04—Employee monthly W/H tax, for prior month (EFT filers only);

10/15/04—Employee monthly W/H tax, for prior month; Miscellaneous tax (except Severance taxes)

10/20/04—Sales & Use Tax

10/25/04—Motor fuel tax (except IFTA); Severance tax

11/01/04—IFTA

11/12/04—Employee monthly W/H tax, for prior month (EFT filers only)

11/15/04—Employee monthly W/H tax, for prior month; Miscellaneous tax (except Severance taxes)

11/22/04—Sales & Use Tax

11/29/04—Motor fuel tax (except IFTA); Severance tax

12/14/04—Employee monthly W/H tax, for prior month (EFT filers only); 4th Qtr. estimated income tax (Based on calendar year filer) (EFT filers only)

12/15/04—Employee monthly W/H tax, for prior month; 4th Qtr. Corporation estimated income tax (Based on calendar year filer); Miscellaneous tax (except Severance taxes)

12/20/04—Sales & Use Tax

12/27/04—Motor fuel tax (except IFTA); Severance tax

The Arkansas State Revenue Tax Quarterly is a publication of the Taxpayer Assistance Office. The newsletter is produced and distributed electronically to tax professionals, businesses, and organizations operating in Arkansas. To be added to or deleted from the e-mail list, contact Jan Moore, phone (501) 682-7751, send an e-mail to jan.moore@rev.state.ar.us, or write to P. O. Box 1272, Ledbetter Building, Room 2460, Little Rock, Arkansas 72203-1272.